

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 979

Introduced by Assembly Member Tom Berryhill

February 27, 2009

An act to add Sections 1020 and 1021 to the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 979, as amended, Tom Berryhill. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would provide that the state fully occupies the field of hunting and fishing, *but permits a city or county to adopt an ordinance regulating hunting and fishing within its jurisdiction, if the ordinance is both necessary for public health and safety and only incidentally effects the state preemption of the field of hunting and fishing.* The bill

would also provide that unless otherwise authorized by the Fish and Game Code or other state or federal law, the commission and the department are the only entities that may adopt or promulgate regulations regarding the taking of fish and game on any lands or waters within the state, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1020 is added to the Fish and Game Code,
2 to read:

3 1020. (a) The Legislature finds and declares all of the
4 following:

5 (1) The California Supreme Court in *In re Makings* (1927) 200
6 Cal. 474, determined that Section 25 ½ of Article IV of the
7 California Constitution, as currently set forth in Section 20 of
8 Article IV, prohibits local governmental entities from regulating,
9 or interfering with, fish and game matters and places this
10 responsibility with the Legislature in order to conserve California's
11 fish and wildlife populations and permit the largest use of fish and
12 game compatible with the reasonable protection thereof.

13 (2) The Fish and Game Commission was established in 1870
14 to assist in the science-based management of California's fish and
15 wildlife resources. The California Constitution permits the
16 Legislature to delegate to the commission certain powers relating
17 to the management of fish and game, and the Legislature has
18 delegated to the commission regulatory powers over the taking
19 and possession of fish and game, as set forth in this code.

20 (3) Hunting and fishing are statistically among the safest outdoor
21 recreational activities, particularly as they relate to impacts on the
22 general public, and are already well regulated by the state through
23 mandatory safety requirements, weapons laws, and regulations
24 adopted by the commission. Additional local regulation is both
25 unnecessary and significantly impedes the uniform, science-based
26 administration of fish and game laws. Hunting and fishing activities
27 are also compatible with other recreational uses on many public
28 lands and waters throughout the state.

29 (b) In enacting this section and Section 1021, it is the intent of
30 the Legislature to affirm, subject to applicable state and federal

law, the exclusive legal authority granted to the commission and the department with regard to the taking and possession of fish and game and thereby ensure necessary comprehensive statewide control by the commission and the department over all fish and game matters for wildlife conservation purposes and the protection of, and access to, hunting and fishing opportunities for the public. ~~It is further the intent of the Legislature to protect public health and safety in those rare and limited instances where state laws and regulations have not already provided a reasonable level of public health and safety by allowing a local ordinance to affect the taking of fish and game within the territorial jurisdiction of the local agency, if the ordinance is both necessary to protect public health and safety and only incidentally affects the state preempted field of hunting and fishing. The ordinance shall not indiscriminately extend or apply to any area in which the taking of fish and game may occur in a manner that does not endanger public health and safety or to any lands or waters owned or managed by the state or federal government.~~

SEC. 2. Section 1021 is added to the Fish and Game Code, to read:

1021. (a) (1) The state fully occupies the field of hunting and fishing pursuant to this code, regulations adopted by the commission pursuant to this code, and Section 20 of Article IV of the California Constitution, and all local regulations are subject to this section.

(2) *Nothing in this section or Section 1020 precludes a city or county from adopting an ordinance, in the exercise of its police powers, within its jurisdictions if the ordinance is both necessary for public health and safety and only incidentally effects the state preemption of the field of hunting and fishing. The ordinance shall not indiscriminately extend or apply to any areas where the taking of fish and game may occur without endangering public health and safety nor to any lands or waters owned or managed by the state or federal government.*

(b) The commission, the department, or any other governmental entity legally authorized to affect the taking of fish and game on navigable waters held in public trust shall, to the extent possible, ensure that the fishing and hunting rights of the public guaranteed under Section 25 of Article I of, and Section 4 of Article X of, the

1 California Constitution, are protected in a manner consistent with
2 those provisions.

3 (e)

4 (1) Unless otherwise authorized by this code or other state or
5 federal law, the commission and the department are the only
6 entities in this state that shall adopt or promulgate regulations
7 regarding the taking of fish and game on any lands or waters within
8 the state. ~~Nothing~~

9 (2) *Nothing* in this section or Section 1020 prohibits a
10 landowner, *including a regional park or open-space district formed*
11 *pursuant to Article 3 (commencing with Section 5500) of Chapter*
12 *3 of Division 5 of the Public Resources Code, on land the district*
13 *owns in fee, leases, manages, or holds an easement, or the*
14 *landowner's designee from restricting the taking of fish and game*
15 *in a manner consistent with state law on property in which the*
16 *landowner has an ownership interest.*